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MEGAN ROUP and THE SCULPT SOCIETY, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRACY ANDERSON MIND AND
BODY, LLC, a Delaware limited
liability company; and T.A. STUDIO
NEW YORK LLC, a California limited
liability company,

Plaintiffs,

v.

MEGAN ROUP, an individual; and
THE SCULPT SOCIETY, LLC, a
California limited liability company,

Defendants.

Case No. 2:22-cv-04735-PSG-E

Hon. Philip S. Gutierrez

**DEFENDANTS MEGAN ROUP
AND THE SCULPT SOCIETY,
LLC'S EVIDENTIARY
OBJECTIONS AND REQUEST FOR
RULING ON SPECIFIED
OBJECTIONS**

Hearing Date: June 7, 2024
Hearing Time: 1:30 p.m.
Courtroom: 6A

I. PRELIMINARY STATEMENT AND REQUEST FOR RULING

Pursuant to paragraph 7.c.3. of the Court’s Standing Order, Defendants Megan Roup (“Roup”) and The Sculpt Society, LLC (“TSS”) (collectively, “Defendants”) object to the evidence identified herein, which plaintiffs Tracy Anderson Mind and Body, LLC (“TAMB”) and T.A. Studio New York LLC (“TANY”) (collectively, “Plaintiffs”) have offered in support of their opposition (Dkt. 84-1) (“Opposition”) to Defendants’ Motion for Full or Partial Summary Judgment (Dkt. 70) (the “Motion”). For the reasons set forth herein, the Court should exclude and not consider the statements set forth below as evidence in support of Plaintiffs’ Opposition, all of which are inadmissible. Defendants respectfully request that the Court rule on the evidentiary objections set forth herein when deciding the Motion.

II. DEFINED OBJECTIONS

Defendants object to the May 17, 2024 Declaration of Gina Durham (the “Durham Decl.”) (Dkt. 84-3) and certain exhibits thereto, and the May 17, 2024 Declaration of Maria Kelling (the “Kelling Decl.”) (Dkt. 84-3, 84-4) and certain exhibits thereto, on the specific grounds set forth in Section III below. For the Court’s convenience, and because of the large volume of Plaintiffs’ evidence and the resulting objections, Defendants define their specific objections as follows:

1. “Lack of foundation” : Pursuant to Rule 602 of the Federal Rules of Evidence, statements contained in one or more of the Declarations and/or exhibits thereto lack foundation and/or are not based on personal knowledge.

2. “Inadmissible opinion and/or improper legal conclusion” : Pursuant to Rule 701 of the Federal Rules of Evidence and relevant case law, statements contained in one or more of the Declarations and/or exhibits thereto are based on impermissible speculation or conjecture, or amount to inadmissible legal argument, legal conclusions, and opinions as to issues of ultimate facts. *See, e.g., Burch v. Regents of the University of California*, 433 F. Supp. 2d 1110, 1119 (N.D. Cal. 2006) (“[S]tatements in declarations based on speculation or improper legal conclusions, or

argumentative statements, are not *facts* and . . . will not be considered on a motion for summary judgment.” (emphasis in original)); *Hunt-Wesson Foods, Inc. v. Ragu Foods, Inc.*, 627 F.2d 919, 928 (9th Cir. 1980) (affidavit properly struck “on the grounds that the statements were speculative, conclusory, and unqualified opinion testimony.”); *Shakur v. Schirro*, 514 F.3d 878, 890 (9th Cir. 2008) (“[C]onclusory affidavits that do not affirmatively show personal knowledge of specific facts are insufficient” (internal quotation marks omitted)).

3. “Hearsay” : Pursuant to Rules 801 through 803 of the Federal Rules of Evidence, statements contained in one or more of the Declarations and/or exhibits thereto constitute inadmissible hearsay.

4. “Not produced prior to fact discovery cut-off” : Pursuant to Rules 26(a) and 37(c)(1) of the Federal Rules of Civil Procedure, documents attached as exhibits to one or more of the Declarations were not produced in fact discovery as required under Rules 26 and 37 of the Federal Rules of Civil Procedure.

5. Failure to Use or Serve Lodged Materials: Plaintiffs lodged videos (Dkt. 74) in connection with their Opposition to Defendants’ Motion for Summary Judgment. It appears that Plaintiffs failed to cite to these videos anywhere in support of their Opposition, rendering them irrelevant and in violation of paragraph 7.c.2. of the Court’s Standing Order. Furthermore, Plaintiffs never served these videos on Defendants as required under the Local Rules. In any event, the lodged videos—certain of TSS’s workout videos—only underscore the functional nature of the exercise routines.

III. SPECIFIC OBJECTIONS

A. Objections to the Declaration of Gina Durham

	Material Objected To	Grounds for Objection
1.	Durham Decl. (Dkt. 84-3), ¶ 2, Ex. A	Lack of foundation and

[illegible]

1		the ideas and how to develop that expression is what she took"]; <i>Sustained / Overruled</i>
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3	5.	Durham Decl., Exh. B (Kelling Depo.) at Lack of foundation and
4		195:23-196:4 ["Megan could still be improper speculation/conjecture
5		copying from our company and not as to what Roup "could" be
6		providing that same kind of movement doing (FRE 602, 701)
7		phrase if she took our practices in terms of <i>Sustained / Overruled</i>
8		how we're developing our company and
9		tried to pass it off as her own idea. It's not
10		about the movement that somebody is
11	6.	doing, it's about how those things are
12		created"]; <i>Sustained / Overruled</i>
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18	6.	Durham Decl., Exh. B (Kelling Depo.) at Lack of foundation as to the
19		222:23-223:1 [REDACTED] basis of Kelling's
20		[REDACTED] "understanding" (FRE 602)
21		[REDACTED]
22		[REDACTED]
23		[REDACTED]
24		[REDACTED]
25		Inadmissible speculation and
26		conjecture as to Roup's
27		practices (FRE 701)
28		<i>Sustained / Overruled</i>
	7.	Durham Decl., Exh. B (Kelling Depo.) at Lack of foundation as to the
		226:19-227:6 ["[Roup] worked for our basis of Kelling's "belief" and
		company for six years, and after two asserted "mimicry" (FRE 602)
		weeks leaving our company, started her
		own company that mimics our product
		and tries to pass it on as her own, I would
		believe strongly that she took some
		information, knowledge, understanding of
		what she had been doing for the last six
		years to start her business two weeks after
		leaving our company"]; <i>Sustained / Overruled</i>
	8.	Durham Decl., Exh. B (Kelling Depo.) at Lack of foundation as to the
		231:19- 232:15 [REDACTED] basis for Kelling's "belief" and
		the asserted "similarity" (FRE

1		[REDACTED]	602)
2		[REDACTED]	
3		[REDACTED]	<i>Sustained / Overruled</i>
4		[REDACTED];	
5	9.	Durham Decl., Exh. B (Kelling Depo.) at	Lack of foundation as to the
6		248:14-23 [“I could assume, based on how	basis for Kelling’s “assumption”
7		closely [Roup’s] final performance is to our	(FRE 602)
8		final performance, that she is using some	Inadmissible speculation and
9		tactics that she learned from working with	conjecture as to what Roup is
10		our company to create and design her	“using” (FRE 701)
11		company”]	<i>Sustained / Overruled</i>
12	10.	Durham Decl., Exh. B (Kelling Depo.) at	Lack of foundation as to the
13		231:19-21 [REDACTED]	basis for Kelling’s “belief” and
14		[REDACTED]	the asserted “similarity” (FRE
15		[REDACTED]	602)
16		[REDACTED]	Inadmissible speculation and
17			conjecture as to what Roup is
18			“using” (FRE 701)
19			<i>Sustained / Overruled</i>
20	11.	Durham Decl., Exh. B (Kelling Depo.) at	Lack of foundation as to the
21		232:5-7 [REDACTED]	asserted [REDACTED] and
22		[REDACTED]	[REDACTED] (FRE 602)
23		[REDACTED];	<i>Sustained / Overruled</i>
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25	12.	Durham Decl., Exh. B (Kelling Depo.) at	Lack of foundation as to the
26		59:8-10 [“the way Ms. Roup delivers her	asserted “closer resemblance”
27		product is a closer resemblance to what we	(FRE 602)
28		deliver in our product”];	<i>Sustained / Overruled</i>

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2	13.	Durham Decl., Exh. B (Kelling Depo.) at 58:23-59:10 [“Q. In your view, is there anything that Ms. Roup and her company are doing that is different from what the other former company trainers were doing when they received their cease and desist letters? . . . A. Yes, I do think there is a difference between what Ms. Roup is doing compared to others. Q. What is the difference? A. From what I’ve seen, the way Ms. Roup delivers her product is a closer resemblance to what we deliver in our product.”]	Lack of foundation as to the asserted “closer resemblance” (FRE 602) <i>Sustained / Overruled</i>
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11	14.	Durham Decl., Exh. B (Kelling Depo.) at 249:5-10 [“I have compared...our videos, and they are very similar. There are movements that are exactly the same. There are moves that are unique to Tracy Anderson’s Method that Megan is also doing”].	Lack of foundation as to the asserted “similarity” and “uniqueness” (FRE 602) Improper opinion testimony (FRE 701) <i>Sustained / Overruled</i>
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17	15.	Durham Decl., Ex. B (Kelling Depo.) at 222:2-16 [“Anybody can write down whatever they want to write down. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].”]	Improper legal conclusion as to “confidential” (FRE 701) <i>Sustained / Overruled</i>
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27	16.	Durham Decl., Exh. F	Lack of foundation as to alleged oral agreement memorialized in
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1		Confirmatory Copyright Assignment Agreement by Tracy Anderson Private Training, LLC and Tracy Anderson Mind and Body, LLC	Exhibit F, to which no one with personal knowledge attests. (FRE 602) <i>Sustained / Overruled</i>
2	17.	Durham Decl., Exh. S (TSS write-ups) “Roup and TANY’s class write-ups look highly similar.”	Lack of foundation and improper attorney argument/opinion as to asserted “similarity” (FRE 602, 701) Improper expert opinion testimony (FRE 701) <i>Sustained / Overruled</i>
3	18.	Durham Decl., Exh. Q (incorrectly cited as Exh. T) (The TA Method Trainers Cueing Protocol) [“TAMB’s specific cueing protocol is unique”].	Lack of foundation and improper attorney argument/opinion as to “unique” (FRE 602, 701) <i>Sustained / Overruled</i>
4	19.	Durham Decl., ¶ 6, Exhibit E 6. Attached hereto as Exhibit E is a true and correct copy of the Contribution and Exchange Agreement entered into on June 1, 2011 by Bubi & Babe Exercise, Inc. and Tracy Anderson Mind and Body, LLC, which was located on April 26, 2024. At the time of the initial document production and relevant deposition, the relevant documents from 2011 had not yet been located despite diligent efforts by Plaintiffs.	Lack of foundation/no personal knowledge to authenticate Exhibit E or its location (FRE 602) Exhibit E not produced before fact discovery cut-off (FRCP 26(a) and 37(c)(1)) <i>Sustained / Overruled</i>
5	20.	Durham Decl., ¶ 6 Since that time, this document relevant to	Improper legal conclusion or attorney argument/opinion as to what is “relevant” (FRE 701)

1	the transfer of TA Works previously	<i>Sustained / Overruled</i>
2	owned by Bubu & Babe Exercise, Inc. to	
3	TAMB was located. Section 1 states that	
4	Bubi & Babe Exercise, Inc. contributed	
5	its tangible and intangible assets to Bubi	
6	& Babe Exercise, LCC, which in turn	
7	contributed them to TAMB.	
8	21. Durham Decl., ¶ 7, Exhibit F	Lack of foundation/no personal
9	7. Attached hereto as Exhibit F is a true	knowledge to authenticate
10	and correct copy of the Confirmatory	Exhibit F (FRE 602)
11	Copyright Assignment Agreement	Exhibit F not produced before
12	entered into on May 14, 2024 and	fact discovery cut-off (FRCP
13	effective nunc pro tunc as of October 28,	26(a) and 37(c)(1))
14	2014 by Tracy Anderson Private	<i>Sustained / Overruled</i>
15	Training, LLC and Tracy Anderson Mind	
16	and Body, LLC . . .	
17	22. Durham Decl., ¶ 8, Exhibit G	Hearsay as to the website's
18	Screenshot of "The Tracy Anderson	contents (FRE 801-803)
19	Method" page from Tracy Anderson's	
20	website at	
21	https://tracyanderson.com/studio/the-way/	
22	23. Durham Decl., ¶ 10, Exhibit I	Hearsay as to the contents of
23	Email correspondence between Megan	the Equinox Instructor Training
24	Roup and Kristy Discipio regarding the	Manual (FRE 801-803)
25	TSS Equinox Trainer Manual on June 28,	
26	2018 (MR_TSS_003858)	
27	24. Durham Decl., ¶ 15	Lack of foundation and
28	15. Attached hereto as Exhibit N are true	improper legal
	and correct copies of the TSS videos that	conclusion/attorney argument
	Plaintiffs identified as examples of	or opinion as to "infringing"
	Defendants' Works which contain	content (FRE 602, 701)
	content that infringes on TAMB's	<i>Sustained / Overruled</i>
	copyrighted works in Plaintiff TAMB's	
	Second Supplemental Response to	
	Defendant Megan Roup's First Set of	

1	Interrogatories.	
2	25. Durham Decl., ¶ 17, Exhibit P	Hearsay (FRE 801-803)
3	Email correspondence sent to Megan	
4	Roup from Maria Davidson on May 4,	
5	2016, distributing the TANY Employee	
6	Handbook and documents included in	
7	TANY's Trainer Manual.	
8	26. Durham Decl., ¶ 18, Exhibit Q	Hearsay (FRE 801-803)
9	The TA Method Trainers Cueing	
10	Protocol.	

B. Objections to the Declaration of Maria Kelling

	Material Objected To	Grounds for Objection
15	27. Kelling Decl. (Dkt. 84-3), ¶ 16	Improper legal conclusion as to
16	16. I also oversee the development and	"confidential information"
17	delivery of company practices and	(FRE 701)
18	policies including the distribution of the	<i>Sustained / Overruled</i>
19	company's confidential information to	
20	employees.	
21	28. Kelling Decl., ¶ 17	Improper legal conclusion as to
22	17. For TAMB and TANY to	"confidential and proprietary
23	successfully produce the volume of	business processes, systems,
24	content they do that honors the creative	and procedures" (FRE 701)
25	expression of Ms. Anderson's	<i>Sustained / Overruled</i>
26	choreographic works, we have	
27	confidential and proprietary business	
28	processes, systems, and procedures in	
	place.	

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29.	Kelling Decl., ¶ 17(a), Exhibit 4 TANY emails discussing clients	Hearsay (FRE 801-803)
30.	Kelling Decl., ¶ 17(b), Exhibit 3 TANY emails to TA trainers regarding TA Method classes	Hearsay (FRE 801-803)
31.	Kelling Decl., ¶ 17(c) <i>The TA Method Cueing Protocol.</i> All trainers receive and are trained in the TA Method Cueing Protocol, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Improper legal conclusion as to “proprietary process” and “proprietary vocabulary” (FRE 701) <i>Sustained / Overruled</i>
32.	Kelling Decl., ¶ 17(d) <i>Weekly Class Write-ups and Videos.</i> The weekly class write-ups and videos [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Lack of foundation and inadmissible speculation/conjecture as to what is “visually discernable” (FRE 602, 701) Improper legal conclusion as to “proprietary documentation” and “proprietary TA Cueing Method” (FRE 701) <i>Sustained / Overruled</i>

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9	33.	Kelling Decl., ¶ 18	Improper legal conclusion as to
10		18. Prior to commencing any training or	“confidential information”
11		obtaining any of TANY’s confidential	(FRE 701)
12		information, trainers are required to	<i>Sustained / Overruled</i>
13		execute a trainer agreement which	
14		prohibits the use or disclosure of TANY’s	
15		confidential information.	
16	34.	Kelling Decl., ¶ 19	Improper legal conclusion as to
17		19. All trainers also receive the Employee	“confidential nature of certain
18		Handbook at the start of their	information” (FRE 701)
19		employment, which specifically discusses	<i>Sustained / Overruled</i>
20		the confidential nature of certain	
21		information and reiterates TANY’s	
22		confidential and proprietary information	
23		policy.	
24	35.	Kelling Decl., ¶ 20	Improper legal conclusion as to
25		20. Employees are also reminded of their	“proprietary information”
26		responsibility to keep confidential	(FRE 701)
27		TANY’s proprietary information via	<i>Sustained / Overruled</i>
28		email reminders and periodic	
		recirculation of the Employee Handbook.	
	36.	Kelling Decl., ¶ 21	Improper legal conclusion as to
		21. TANY’s confidential information,	“confidential information”
		including documents [REDACTED]	(FRE 701)
		[REDACTED]	<i>Sustained / Overruled</i>

1		[REDACTED]	
2		[REDACTED] are conveyed and disclosed to	
3		trainers via email on at least a weekly	
4		basis. Each email disclosing TANY's	
5		confidential information to an employee	
6		contains a confidentiality notice	
7		reminding the employee of their	
8		responsibility to keep information	
9		confidential.	
10	37.	Kelling Decl., ¶ 22	Lack of foundation and inadmissible speculation/conjecture as to what is "ascertainable" (FRE 602, 701)
11		22. Much of TANY's confidential information related to [REDACTED]	Improper legal conclusion as to "confidential information" (FRE 701)
12		[REDACTED]	
13		[REDACTED]	
14		[REDACTED] This information is not information that is ascertainable from simply watching or taking a TA Method class.	<i>Sustained / Overruled</i>
15	38.	Kelling Decl., ¶ 23	Lack of foundation and inadmissible speculation/conjecture as to what is "ascertainable" (FRE 602, 701)
16		23. During weekly content meetings,	
17		[REDACTED]	
18		[REDACTED]	
19		[REDACTED]	<i>Sustained / Overruled</i>
20		[REDACTED]	
21		[REDACTED]	
22		[REDACTED] This information is also not ascertainable from simply watching or taking a TA Method class [REDACTED]	
23		[REDACTED]	
24		[REDACTED]	
25		[REDACTED]	
26	39.	Kelling Decl., ¶ 24	Lack of foundation and inadmissible speculation/conjecture as to what Roup "needed" to
27		24. In order for Roup to satisfactorily perform in her role as a TA Trainer, she	
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1	would have had to memorize much, if not	memorize to perform her role
2	all, of the confidential information	as a TA Trainer (FRE 602, 701)
3	detailed in paragraph 17, including the	
4	cueing protocol, weekly writeups, and	Improper legal conclusion as to
5	client specific information.	“confidential information”
6		(FRE 701)
7		<i>Sustained / Overruled</i>

C. Objections to Other Evidence

	Material Objected To	Grounds for Objection
10 11 12 13 14 15	37. Declaration of Nathaniel L. Bach (Dkt. 69-3), Exh. 3 (Kelling Depo.) at 166:25-167:15 [“I think the company does have reason to believe that [Roup] took confidential information when she left the company...[because] she is mimicking our expressive creative movement and creating a product and selling it as her own”];	Lack of foundation as to the basis for the company’s “belief” (FRE 602) Inadmissible speculation and conjecture as to what Roup “took” (FRE 701) <i>Sustained / Overruled</i>
16 17 18 19 20	38. Declaration of Nathaniel L. Bach (Dkt. No 69-3), Exh. 1 (First Amended Complaint), ¶¶ 1, 19, 47, and 51.	An unverified complaint “cannot be considered as evidence at the summary judgment stage.” <i>Moran v. Selig</i> , 447 F.3d 748, 759 (9th Cir. 2006); <i>Bond v. Knoll</i> , 2014 WL 7076901, at *9 (C.D. Cal. Dec. 10, 2014) (Gutierrez, J.).

Dated: May 24, 2024

Respectfully Submitted,
MANATT, PHELPS & PHILLIPS, LLP

By: /s/ Nathaniel L. Bach
Nathaniel L. Bach

Attorneys for Defendants